



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
-----)	ISCR Case No. 10-07289
)	
)	
Applicant for Security Clearance)	

Appearances

For Government:
Melvin A. Howry, Esq., Department Counsel

For Applicant:
Pro se

March 2, 2012

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on March 2, 2010. (Government Exhibit 1.) On April 15, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on May 26, 2011, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on June 29, 2011. This case was assigned to me on July 5, 2011. DOHA issued a notice of hearing on July 26, 2011. I convened the hearing as scheduled on August 30,

2011. The Government offered Government Exhibits 1 through 6, which were received without objection. Applicant testified on his own behalf, and submitted Applicant Exhibits A and B, which were also received without objection. Applicant asked that the record remain open for the receipt of additional documents. Applicant submitted Applicant Exhibit C on September 16, 2011, which was admitted without objection. DOHA received the transcript (Tr) of the hearing on September 15, 2011. The record closed on September 16, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant is 37 and divorced. One of his two children just turned 18, and he shares custody with his ex-wife of the second child, who is still a minor. He is employed by a defense contractor and seeks to obtain a security clearance in connection with his employment.

Guideline F, Financial Considerations

The Government alleges that Applicant is ineligible for clearance because he is financially overextended and, therefore, at risk of having to engage in illegal acts to generate funds. Applicant denied the factual allegations in the SOR. He also submitted additional information to support his request for a security clearance.

Applicant began work with his current employer in May 2009. (Government Exhibit 1 at Section 13A.) His current employment is a full-time job with full benefits. Applicant submitted an updated Personal Financial Statement after the hearing, which shows that he is able to maintain his current debts without difficulty. (Applicant Exhibit C at 20.)

The SOR alleges Applicant owed eight creditors \$37,728 in past due indebtedness. (SOR 1.a through 1.h.) The existence and amounts of these debts are supported by credit reports concerning Applicant dated March 10, 2010; March 25, 2011; and August 24, 2011. (Government Exhibits 2, 4 and 6.) They are also confirmed by Applicant's e-QIP (Government Exhibit 1 at Section 26); his Financial & Interview Verification Interrogatory dated February 25, 2011 (Government Exhibit 3); and the documents accompanying his bankruptcy petition, further discussed below. Finally, Applicant did not dispute the validity of any of these debts during his testimony.

Applicant stated that his financial difficulties were brought about by two events. First, beginning in 2004, he and his wife separated and began a lengthy, difficult and expensive divorce proceeding, which was not completed until 2008. Secondly, in approximately 2007 or 2008, his prior employer cut his wages and reduced his benefits. As a result of all of this, he had to use credit cards to pay day to day expenses, and reached a point where he could not keep up on the payments. (Tr at 32-36.) After obtaining his new employment, Applicant set about modifying his mortgage, which he successfully did. (Tr at 34; Applicant Exhibit C at 11-12.) He also telephonically

contacted all of the creditors set forth in the SOR, in an attempt to resolve the debts. He was unable to do so, knew he was in a bad situation, and made the decision to file for bankruptcy protection. (Tr at 37, 49-55.)

After saving enough money to pay for an attorney to represent him, Applicant filed for protection under Chapter 7 of the Bankruptcy Code on August 19, 2011. (Tr at 38; Applicant Exhibit B.) The meeting of creditors was to be on October 17, 2011. Objections for Discharge were due by December 16, 2011. All of the debts in the SOR are included in either the original Schedule F (Applicant Exhibit B at 17-19), or the Amended Schedule F, filed September 6, 2011 (Applicant Exhibit C at 7-16). Applicant submitted evidence showing that he has received both credit counseling, and a personal financial management course, as required by the bankruptcy court. (Applicant Exhibits B at 8, and C at 6.)

Mitigation

Applicant submitted 15 recognition and award certificates from his employer. These awards span his entire period of employment with his current employer and are given because of his “outstanding performance and invaluable contributions.” (Appellant Exhibit A.)

Policies

Security clearance decisions are not made in a vacuum. When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used as appropriate in evaluating an applicant’s eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based

on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, “The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Security clearance decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant, by his own admission, and supported by the documentary evidence, had a considerable number of debts that he could not resolve. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment.” In addition, AG ¶ 20(b) states that the disqualifying conditions may be mitigated where “the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances.”

The evidence shows that both of the above mitigating conditions apply to Applicant. His financial situation was caused by a drop in his income, due to his hours and benefits being cut by his then employer, and a years-long divorce battle. There is no evidence of poor judgment on his part. Once he got his new job and his finances stabilized, Applicant worked to resolve his financial situation. Only after he successfully modified his mortgage, which remains current; and found that the other creditors would not cooperate with him, did he make the difficult decision to file for Chapter 7 bankruptcy protection. This is a legal remedy that will allow Applicant to have a fresh start with his finances. Based on the particular facts of this case, I find that he has “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” as required by AG ¶ 20(d).

Applicant has received financial counseling. As found above, his current financial situation is stable. I find that “the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control,” as required by AG ¶ 20(c).

The Applicant has acted in a way that shows good judgment, making the best he could out of a difficult situation. All of these mitigating conditions apply to the facts of this case. (See ISCR Case No. 09-08533 (App. Bd. Oct. 6, 2010).)

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of the applicant’s conduct and all the relevant circumstances. Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual’s age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation

for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. Applicant's financial difficulties were not a result of poor judgment on his part. Since he was employed in 2009 by his current employer his financial condition has stabilized. His debts will be resolved by the legal avenue of bankruptcy. Under AG ¶ 2(a)(2), I have considered the facts of Applicant's debt history. As stated at length above, this was brought about because of a divorce and job issues. Based on the record, I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); and that there is a low likelihood of recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his financial situation. On balance, I conclude that Applicant has successfully mitigated the Government's case opposing his request for a security clearance. Accordingly, the evidence supports granting his request for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a through 1.h: For Applicant

Conclusion

In light of all of the circumstances presented by the record, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS
Administrative Judge